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URETHANE SYSTEMS SDN BHD

v.

QUEK YAK KANG

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HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY J
[ORIGINATING SUMMONS NO: [MT-1] 24-3567-2005]
13 DECEMBER 2005

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LAND LAW: *Caveat - Private caveat - Application to extend - Whether plaintiff's claim based on monetary loss - Whether monetary claim gives rise to a caveatable interest - Whether plaintiff's caveat patently wrong - Whether no extension could be availed of in respect of wrongful caveat - Whether plaintiff, as caveator, failed to discharge its*

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burden for extension - Defendant's title and interest in land - Whether indefeasible under s. 340(1) of National Land Code - Whether there was evidence to defeat defendant's registered title under s. 340(2) National Land Code - Whether defendant, as purchaser, has statutory protection under ss. 267 and 269 of National Land Code

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This was the plaintiff's application to extend its private caveat ('the caveat') entered over the property ('the said land'). Prior to 16 March 2005, the plaintiff was the registered proprietor of the said land. The said land was charged by the plaintiff to Hong

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Leong Bank Bhd, which had, upon default in payment by the plaintiff, obtained an order for sale from the Land Administrator, Muar. The Land Administrator ordered, under s. 263 of the National Land Code ('the Code') the said land to be sold by public auction on 16 February 2005 at the reserve price of

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RM560,000 based on the chargee's bank valuation report. On 31 January 2005, the plaintiff obtained a valuation report of the said Land giving the market value at RM1.2 million. The defendant successfully bidded for the said Land at the reserve price of RM560,000 and accordingly entered into the memorandum of

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contract dated 16 February 2005 and upon payment of the balance of the purchase price received the Certificate of Sale. The defendant became the registered proprietor of the said land, free from encumbrances and was in exclusive possession of the said land since. The defendant had also on 16 March 2005 created a

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charge of the land to Public Bank Bhd. It was the plaintiff's case that by reason of the undervalue of the reserve price and the defendant having paid other interested bidders the sum of

RM35,000 each for them not to bid, the defendant could not be said to be a *bona fide* purchaser for value and hence pending determination of his suit to set aside the order for sale, to maintain the *status quo* his caveat ought to be extended.

Held (dismissing plaintiff's application):

(1) A close scrutiny of the plaintiff's statement of claim revealed that it was claiming the loss of RM640,000 being the difference of their valuation of RM1.2 million and the reserve price of RM560,000. That was the crux of the plaintiff's grievance and by reason thereof the plaintiff's claim was one based on monetary loss. The law is clear that it can never give rise to a caveatable interest and hence the plaintiff's caveat was patently wrong and no extension could be availed of in respect of a wrongful caveat. (para 8)

(2) The plaintiff's caveat was lodged after the defendant became the registered owner and Public Bank Berhad acquired their registered interest though the charge. The entry of the caveat would in the circumstances invariably affect the chargee bank's rights of foreclosure. There was also no allegation or evidence whatsoever of fraud on the part of the defendant on the chargee bank. (para 9)

(3) On the plaintiff's averment that the other bidders were paid off by the defendant, there was a total absence of particulars as to the names and payments made to the bidders and hence the plaintiff's averment remained bald allegations without condescending on particulars and could not be accepted by this court. The plaintiff, as caveator, had totally failed to discharge its burden for extension of the caveat. (paras 10 & 12)

(4) The defendant's title and interest in the said land was now indefeasible under s. 340(1) of the Code, and there was totally no evidence to defeat his registered title under s. 340(2) of the Code. The chargee, Public Bank Bhd, had also acquired indefeasibility upon registration of the charge of the said land. The law is clear that the Certificate of Sale entitled the defendant as purchaser to be registered as the new proprietor of the said land, which was duly done on 16 March 2005. The defendant, as purchaser, has the statutory protection under ss. 267 and 269 of the Code. (para 13)

Case(s) referred to:

Eng Mee Yong & Ors v. Letchumanan [1979] MLJ 212 PC ***(refd)***

Gondola Motor v. Almurisi Holdings [1992] 4 CLJ 2212; [1992] 1 CLJ (Rep) 112 HC ***(refd)***

Hew Sook Ying v. Hiw Tin Hee [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120 SC ***(refd)***

Kuala Lumpur Finance Bhd v. Yap Poh Khuan (Teo Sik Eng and Anor Interveners) [1991] 3 CLJ 1805; [1991] 3 CLJ (Rep) 75 HC ***(refd)***

Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd [1992] 1 MLJ 263 SC ***(refd)***

Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 2 CLJ 713 CA ***(refd)***

M & J Frozen Food Sdn Bhd v. Siland Sdn Bhd & Anor [1994] 2 CLJ 15 SC ***(refd)***

Murugappa Chettiar Lakshmanan v. Lee Teck Mook [1995] 1 CLJ 545 CA ***(refd)***

Pembangunan Wang Kita Sdn Bhd v. Fry Fry Marketing Services Sdn Bhd [1998] 2 CLJ Supp 96 HC ***(refd)***

Perdana Properties Bhd v. Yong Chon [1990] 1 CLJ 538; [1990] 2 CLJ (Rep) 620 HC ***(refd)***

Trans-Summit Sdn Bhd v. Chun Nyook Lin [1996] 3 CLJ 502 CA ***(refd)***

Legislation referred to:

National Land Code, ss. 263, 267, 269, 340(1), (2)

For the plaintiff - Tan Koon Heo; M/s KH Tan & Co

For the defendant - Wong Kim Fatt; M/s Gulam & Wong

Reported by Suhainah Wahiduddin

JUDGMENT

Syed Ahmad Helmy J:

[1] The application in encl. 3 by the plaintiff, Urethane Systems Sdn. Bhd., is to extend its private caveat No. 895/2005 entered on 4 April 2005 ("the caveat") over the property known as Lot 4340, held under land office title GM 1563, Mukim Bandar, District of Muar, State of Johor ("the said land"').

[2] The plaintiff's application is supported by two affidavits of its Director, Mr. Tay Thian Beng, affirmed in encls. 4 and 6. The defendant's affidavit in opposition is found in encl. 5.

[3] The plaintiff advanced two main reasons in support of its application for extension of the caveat namely that the auction sale price was unreasonably low and secondly the defendant had paid the other bidders present the sum of RM35,000 each for them not to bid and relies on the case of *Kuala Lumpur Finance Bhd. v. Yap Poh Khuan (Teo Sik Eng and Anor Interveners)* [1991] 3 CLJ 1805; [1991] 3 CLJ (Rep) 75 which held that an auction sale can be set aside if there is impropriety in cases involving corruptive collusion. Also *M & J Frozen Food Sdn. Bhd. v. Siland Sdn. Bhd. & Anor* [1994] 2 CLJ 15.

[4] The undisputed background fact was that prior to 16 March 2005 the plaintiff was the registered proprietor of the said land. The said land was charged by the plaintiff to Hong Leong Bank Bhd., which had, upon default in payment by the plaintiff, obtained an order of sale from the Land Administrator, Muar.

[5] On 6 January 2005, the Land Administrator held an enquiry under s. 261 of the National Land Code ("the code"). The plaintiff's director, Mr Tan Thian Beng and another representative attended the enquiry. The chargee bank was represented by two representatives. At the conclusion of the enquiry, no cause to the contrary having been shown, the Land Administrator ordered, under s. 263 of the Code, the said land to be sold by public auction on 16 February 2005 at the reserve price of RM560,000 (as per exh. QYK8 of defendant's affidavit in encl. 5 where the amount owing to the chargee was stated to be RM9,467,209.95), based on the chargee bank's valuation report dated 15 September 2003 prepared by Jones Lang Wootton. On 31 January 2005, the plaintiff obtained a valuation report of the said land giving the market value of the said land at RM1.2 million. The defendant successfully bidded for the said land at the reserve price of RM560,000 and accordingly entered into the memorandum of contract dated 16 February 2005 and upon payment of the balance of the purchase price received the certificate of sale.

[6] On 16 March 2005, the defendant became the registered proprietor of the said land, free from encumbrances and is in exclusive possession of the said land since. The defendant had also on 16 March 2005 created a charge of the land to Public Bank Bhd. It is significant to note that the plaintiff had filed in the Muar High Court a civil suit and an application to stop the auction sale fixed on 16 February 2005, but on 5 February 2005, the plaintiff

had failed to obtain an order to stop the auction sale of the said land as the learned judge struck out the plaintiff's suit and its application for an injunction (see exh. QYK1).

[7] Under s. 340 of the National Land Code upon registration the title of the registered proprietor becomes indefeasible subject to the statutory exceptions therein. It is the plaintiff's case that by reason of the undervalue of the reserve price and the defendant having paid other interested bidders the sum of RM35,000 the defendant cannot be said to be a *bona fide* purchaser for value and hence pending determination of his suit to set aside the order for sale, to maintain the *status quo* his caveat ought to be extended.

[8] For the plaintiff to succeed the burden is upon them to show that they have a caveatable interest. A close scrutiny of the plaintiff's statement of claim and in particular to paras. 13 and 14 thereof as found in exh. TTB4 of encl. 4 reveals that the plaintiff is claiming the loss of RM640,000 being the difference of their valuation of RM12 million and the reserve price of RM560,000. That is the crux of the plaintiff's grievance and by reason thereof it is crystal clear that the plaintiff's claim is one based on monetary loss. That being the position the law is clear that it can never give rise to a caveatable interest and hence the plaintiff's caveat is patently wrong and no extension can be availed of in respect of a wrongful caveat – see *Trans-Summit Sdn. Bhd. v. Chun Nyook Lin* [1996] 3 CLJ 502, *Pembangunan Wang Kita Sdn. Bhd. v. Fry Fry Marketing Services Sdn. Bhd.* [1998] 2 CLJ Supp 96.

[9] It is also significant to stress that the plaintiff's caveat was lodged after the defendant became the registered owner and Public Bank Berhad acquired their registered interest through the charge. The entry of the caveat would in the circumstances invariably affect the chargee bank's rights of foreclosure. There is also no allegation or evidence whatsoever of fraud on the part of the defendant or the chargee bank.

[10] On the plaintiff's averment that the other bidders were paid off by the defendant there is a total absence of particulars as to the names and payments made to the bidders and hence the plaintiff's averment remains bald allegations without condescending on particulars and cannot be accepted by this court.

[11] The two cases of *K.L. Finance* and *M.J. Frozen Food* are not supportive of the plaintiff's case as it revolves round the issue of whether the registrar had jurisdiction to extend time.

[12] On the facts and the authorities, the plaintiff, as caveator, has totally failed to discharge its burden for the extension of the caveat. See:

a) *Murugappa Chettiar Lakshmanan v. Lee Teck Mook* [1995] 1 CLJ 545, CA.

b) *Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng & Anor* [1995] 2 CLJ 713, CA.

c) *Eng Mee Yong & Ors v. Letchumanan* [1979] MLJ 212, PC.

d) *Hew Sook Ying v. Hiw Tin Hee* [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120, SC.

e) *Kumpulan Sua Betong Sdn. Bhd. v. Dataran Segar Sdn. Bhd.* [1992] 1 CLJ 20; [1992] 1 CLJ (Rep) 150 SC.

[13] It is indisputable that, having paid the full purchase price for the said land and received the certificate of sale, the defendant had since 16 March 2005 become the registered proprietor of the said land free from encumbrances. His title to and interest in the said land are now indefeasible under s. 340(1) of the Code, and there is totally no evidence to defeat his registered title under s. 340(2) of the Code. The chargee, Public Bank Bhd., had also acquired indefeasibility upon registration of the charge of the said land on 24 March 2005 (*Gondola Motor v. Almurisi Holdings* [1992] 4 CLJ 2212; [1992] 1 CLJ (Rep) 112). Public Bank Bhd. is not a party in the plaintiff's application which cannot deprive the bank of its registered interest without giving the bank the right of hearing. The law is clear that the certificate of sale (exh. QYK9 p. 48), entitles the defendant as purchaser to be registered as the new proprietor of the said land, which was duly done on 16 March 2005. See:

a) *Gondola Motor Credit Sdn. Bhd. v. Almurisi Holdings Sdn. Bhd.* [1992] 1 CLJ 2212; [1992] 1 CLJ (Rep) 112, SC.

b) *Perdana Properties Bhd. v. Yong Chon* [1990] 1 CLJ 538; [1990] 2 CLJ (Rep) 620.

[14] The defendant as purchaser has the statutory protection under ss. 267 and 269 of the Code.

[15] The balance of convenience (if it arises at all) lies wholly on the side of the defendant for the removal of the plaintiff's wrongful caveat against the defaulting plaintiff. See *Eng Mee Yong* above.

[16] For the reasons adumbrated above the plaintiff's application is hereby dismissed with costs, and that the plaintiff do pay the defendant damages for the wrongful entry of the caveat, to be assessed by the registrar of this court.